

Office of the State Public Defender Administrative Policies

Subject: Determination of Indigence	Policy No.: 105
Title 47	Pages: 7
Section: 1-111	Last Review Date: 6-15-10
Effective Date: 7-1-06	Revision Date: 6-15-10

1.0 POLICY

- 1.1** The Office of the State Public Defender (OPD) will provide public defender services to applicants that qualify under 47-1-111, MCA.
- 1.2** When a court orders OPD to assign counsel, the office shall immediately assign counsel prior to a determination of indigence.

2.0 PREPARATION AND DELIVERY OF INDIGENCE FORM

- 2.1** All district and limited courts will send appointment forms to Regional Public Defender Offices. The appointment form is provided by the Central Office, and provides information about the applicant for public defender services.
- 2.2** The Central Office shall provide the Regional Public Defender Offices with indigence questionnaire (IQ) forms as prepared by OPD and approved by the Montana Public Defender Commission.
- 2.3** Regional Deputy Public Defenders or their staff will deliver forms to all jails and courthouses and any other venue deemed appropriate.
- 2.4** An applicant for public defender services will be assigned provisional counsel prior to the determination of the applicant's indigence.
- 2.5** An applicant for public defender services must complete the IQ form, sign it, and return it to the Regional Public Defender Office within ten days of appointment. The office will move to rescind the appointment if the required materials are not provided.
 - 2.5.1** An applicant may be required to provide documentation of income, including pay stubs and/or tax returns.
- 2.6** An Indigence Determination Specialist (IDS) will aid any applicant requesting assistance. Information on the IQ form is confidential.
 - 2.6.1** Each Regional Deputy Public Defender will appoint a support staff person as IDS for the region, and a designated staff backup if appropriate. The Central Office will maintain a list identifying the IDS and backup IDS for each region.
 - 2.6.2** The Regional Deputy Public Defender will not act as the IDS.

3.0 DETERMINATION OF INDIGENCE

- 3.1** The IDS will review the IQ form, fill in any missing information, and assure that the IQ form is signed by the applicant.
- 3.2** The IDS will determine eligibility for services based on:
 - 3.2.1** Gross household income falls within the Gross Income Guidelines (Attachment A), which are based on the federal poverty level; or
 - 3.2.2** Retaining private counsel would result in substantial hardship to the applicant or his/her household. Both disposable income (gross household income less expenses) and assets will be reviewed when qualifying an applicant under this section. The crime charged shall also be a factor considered in the determination.
- 3.3** If the IDS has a question regarding an applicant's eligibility for public defender services, the Regional Deputy Public Defender will make a ruling.

4.0 ELIGIBILITY VERIFICATION

- 4.1** The IDS will verify income and assets for all applicants seeking qualification under 3.2.2. Verification may include requiring pay stubs and/or tax returns and doing a property records search.
- 4.2** The IDS will verify income and assets for every tenth applicant seeking qualification under 3.2.1.
- 4.3** New or additional information regarding an applicant's income or assets may result in a redetermination of eligibility.

5.0 QUALIFIED APPLICANTS

- 5.1** If the applicant is eligible for public defender services, a written notice of approval shall be sent to the applicant and the appropriate public defender office or contract attorney.
- 5.2** The court will be advised that the person has qualified for public defender representation.

6.0 DISQUALIFIED APPLICANTS

- 6.1** If the applicant does not qualify for public defender services, a written notice of disqualification and notice of the right to have the court review the finding will be sent to the applicant.
- 6.2** The Regional Deputy Public Defender shall immediately notify the court of record when it is determined that an applicant does not qualify for public defender services (refer to Attachment B, Standard Letter of Notification of Denial, and Attachment C, Motion to Rescind Appointment).
- 6.3** The judge must rescind the appointment of counsel when notified that an applicant does not qualify for public defender services.
- 6.4** A judge may overrule a determination that an applicant is not eligible for public defender services. If overruled, OPD will provide public defender services to the applicant.

7.0 RECOVERY OF ATTORNEY FEES BY OPD

- 7.1** If an applicant is found guilty by plea or trial, the Regional Deputy Public Defender or his/her designee shall determine the amount owed for public defender services.
- 7.2** If the defendant has some ability to pay, then in determining both the amount and method of payment any payment plan must take into consideration the financial resources of the defendant and the nature of the burden that payment of costs will impose.
- 7.3** The hourly rate for public defender services is set at \$67.00 plus third-party costs;
 - 7.3.1** The amount of time spent on a case shall conform to the amount of time reported on the public defender's timesheet.
 - 7.3.2** A copy of the bill along with notification of where payments shall be made will be provided to the client and placed in the client's file.
- 7.4** If the person is acquitted or the charges are dismissed, no reimbursement will be sought.

8.0 CLOSING

Questions about this policy should be directed to the OPD Central Office at the following address:

Office of the State Public Defender
Administrative Service Division
44 West Park
Butte, MT 59701
Phone 406-496-6080

ATTACHMENT A
GROSS INCOME GUIDELINES
2012

<u>Number of Persons in Household</u>	<u>Gross Household Income Guidelines</u>
1	\$14,856
2	\$20,123
3	\$25,390
4	\$30,657
5	\$35,923
6	\$41,190
7	\$46,457
8	\$51,724
Each Additional Member Add:	\$5,267

ATTACHMENT B
STANDARD LETTER OF NOTIFICATION OF DENIAL

Name
Regional Deputy Public Defender
Region (#)
(Address)

(Date)

(Client Name)
(Client Address)

Dear (Client):

Please be advised that in applying the criteria outlined in Section 47-1-111 MCA to the information you provided on your indigency questionnaire, I have determined that you do not qualify for public defender services. The Office of the State Public Defender will ask the Court to rescind the appointment of a public defender. You must hire a private attorney within 10 days of this letter or represent yourself.

Your next court appearance is scheduled for (date) (time) in _____
Court.

If you do not agree with this determination, you have the right to ask the judge in your case to review your financial status. If you do ask for review, we are required to make your indigency questionnaire available to the judge and the prosecutor for inspection.

Sincerely,

Regional Deputy Public Defender
Region (#)

ATTACHMENT C

MOTION TO RESCIND APPOINTMENT OF PUBLIC DEFENDER

Name
Regional Deputy Public Defender
Region (#)
(Address)

Telephone:

MONTANA (XXXXX) JUDICIAL DISTRICT COURT, (XXXX) COUNTY

STATE OF MONTANA,)	
)	
Plaintiff,)	Cause No. _____
)	
v.)	MOTION TO RESCIND
)	APPOINTMENT OF PUBLIC
)	DEFENDER
)	
_____,)	
)	
Defendant.)	

COMES NOW, (RDPD), attorney for Defendant, (Name), and hereby moves the Court to rescind the appointment of the Office of the State Public Defender because the Defendant does not meet the criteria set out in Section 47-1-111, MCA, to be eligible for representation by the Office of the State Public Defender.

The Defendant has been notified of this determination as well as his right to ask this Court to review the determination.

DATED this _____ day of _____, 200__.

(Name)

Regional Deputy Public Defender

Region (#)

CERTIFICATE OF SERVICE

I hereby certify that I caused to be mailed a true and accurate copy of the foregoing MOTION TO RESCIND APPOINTMENT, postage prepaid, by U.S. mail, to the following:

Dated this _____ day of _____, 200__.
